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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SANDRA SUMMERS and DARIIA FELDENHEIMER, individually and on behalf of all other similarly situated aggrieved employees, Plaintiffs, v. CROSS COUNTRY HEALTHCARE, INC., TRAVEL STAFF, LLC and DOES 1-50, inclusive Defendants.	Case No. CGC-23-611080 Assigned for all purposes: Judge Ethan P. Shulman, Dept. 304 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR (1) CERTIFICATION OF A SETTLEMENT CLASS; (2) PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; (3) APPROVAL OF NOTICE AND NOTICE DISSEMINATION PLAN; AND (4) APPROVAL OF A SCHEDULE FOR THE FINAL APPROVAL PROCESS.** Complaint Filed: December 13, 2023 Hearing Date: Sept. 6, 2024 Time: 10:00 a.m. Dept.: 304

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I. INTRODUCTION

After multiple years of litigation in three forums and two full-day mediations, Plaintiffs Summers and Feldenheimer reached a $2,345,000 non-reversionary class and PAGA representative action settlement with Cross Country.[1] The settlement will resolve a class of 212 travel nurses' claims that (1) Cross Country engaged in a pattern and practice of making take-it-or-leave-it demands that the nurses accept lower wages than what they had contracted for after they traveled to California to work an assignment in violation of Labor Code § 970; and (2) they were underpaid overtime because Cross Country did not include in the regular rate weekly stipend payments that Plaintiffs alleged were actually wages in violation of Labor Code § 510 and thus paid them a lower overtime rate than required. The settlement also resolves these nurses' derivative PAGA claims.

The common fund will make significant payments to class members. Every class member will be allotted a $100 minimum payment. Most will recover far more. After accounting for the $5,000 PAGA Payment, two $10,000 service awards, a $5,000 reserve fund for errors and omissions, one-third of the fund for Plaintiffs' counsel's attorneys' fees plus up to $75,000 in expenses, and up to $15,000 for settlement administration, the estimated settlement payment will exceed $6,800 per class member. There is no claims process. Following final approval, checks will be mailed to class members. In exchange, class members will release claims that were or could have been asserted based on the facts alleged in the Complaint. This is a meaningful result for these workers, particularly given the untested nature of the Labor Code § 970 claims.

Plaintiffs submit this unopposed motion for (1) certification of the Settlement Class for purposes of settlement; (2) preliminary approval of the Settlement Agreement; (3) approval of the proposed Notice of Settlement ("Notice") and dissemination plan, and (4) approval of a process and hearing for Final Approval.[2]

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[1] Defendants Cross Country Healthcare, Inc. and Travel Staff, LLC are referred to throughout collectively as "Cross Country."

[2] All defined terms have the same meaning as those in the Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Alexander T. Ricke (one of Plaintiffs' counsel). All exhibits are attached to the Ricke Declaration.

II. NATURE OF THE CLAIMS

Plaintiffs are travel nurses who worked for Cross Country in California. Travel nurses work short-term assignments (typically 13 weeks) that require them to travel to a healthcare facility that is often hundreds of miles from home. The inducement for the nurses to perform this challenging work is the premium pay packages they are offered. Plaintiffs assert three Labor Code claims premised on two challenged employment practices for these workers.

First, Plaintiffs allege that Cross Country offers contracts to travel nurses with fixed-term assignments at agreed-upon pay rates. After the nurses accept the position, travel to the work location, and start the assignment, Cross Country makes a "take-it-or-leave-it" demand to accept less pay or be terminated. Of course, most nurses have no choice but to continue working the assignment at the lower rate because they have no reasonable alternatives for comparable employment: they have already incurred travel expenses, secured short-term housing, and uprooted their lives to accept the assignment. Plaintiffs allege that this practice violated Labor Code § 970's prohibition on employers "influencing or persuading an employee to relocate from one place to another for work, by means of knowingly false misrepresentations regarding, among other things, the kind, character, or existence of such work; the length of time such work will last; or the compensation therefor. Cal. Lab. Code § 970; First Amended Complaint ("FAC") at ¶¶ 19-24, 85-94.

Second, Plaintiffs allege that Cross Country underpays overtime wages by failing to include certain "stipend" or "per diem" payments in the regular rate of pay consistent with the Ninth Circuit's opinion in *Clarke v. AMN Servs., LLC*, 987 F.3d 848 (9th Cir. 2021). Plaintiffs contend that because the stipend payments were tied to the quantity of work (among other reasons), these payments functioned as wages that must be included in the regular rate when calculating the overtime rate under California law. Cal. Lab. Code § 510; FAC at ¶¶ 41-42, 72-84.

Third, Plaintiffs assert claims for penalties under PAGA premised on the above-described violations of Labor Code §§ 510 and 970 as well as derivative claims for penalties under Labor Code §§ 201, 202, 204, 210, 558, 1174, 1175, 1197.1, 2699, 2800, and 2802. FAC at ¶¶ 95-105.

III. PROCEDURAL HISTORY

a. The *Summers* Action in Florida Federal Court and Arbitration.

On July 29, 2022, Plaintiff Summers filed a class and collective action complaint against Cross Country in Florida federal court. *See Summers v. Cross Country Healthcare, Inc.*, Case No. 9:22-cv-81137-AMC ("*Summers* Federal Case"), ECF No. 1 (S.D. Fl.). The *Summers* Federal Case asserted state and federal law claims premised on the same allegations at issue in this case.

Cross Country responded by filing a "Motion to Compel Individual Arbitration or Stay the Case" relying on its arbitration agreements with those plaintiffs, including Plaintiff Summers. *Summers* Federal Case, ECF No. 21. Plaintiffs Summers opposed the arbitration motion, arguing, among other points, that the arbitration agreements had been fraudulently induced. *Id*. at ECF No. 25, at 5-23. The federal district court granted Cross Country's motion on November 4, 2022, finding that the arbitration agreements "include[] a provision delegating to an arbitrator all issues of interpretation, applicability, and enforceability of that agreement" and that the challenges raised by the plaintiffs "are off limits to this Court." ECF No. 32, at 7-8. Pursuant to the federal district court's order, Plaintiff Summers filed an individual arbitration demand with the American Arbitration Association ("AAA") challenging the enforceability of the arbitration agreement.

b. The *Feldenheimer* Action in Florida Federal Court.

As Plaintiff Summers' arbitration proceeded, Plaintiffs' counsel contacted Cross Country's counsel in May 2023 regarding additional clients Plaintiffs' counsel represented and asked whether Cross Country had entered into arbitration agreements with these workers as well. One of these travel nurses was Plaintiff Feldenheimer. In response to Plaintiffs' counsel's request, Cross Country filed a Complaint for Declaratory Judgment against Plaintiff Feldenheimer and two other nurses in Florida Federal Court. *See Cross Country Healthcare, Inc. v. Feldenheimer*, Case No. 9:23-cv-80919, ECF No. 1 (S.D. Fl.). The complaint against Plaintiff Feldenheimer attached the arbitration agreement between the parties and asserted a "present and live dispute" between the parties "as to the enforceability and the applicability of Defendants' executed Arbitration Agreements." *Id*. at ¶ 17. Cross Country asked the Court to declare pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, that the agreements are "valid and enforceable" and "not induced by fraud." *Id.* In response, Plaintiff Feldenheimer filed a motion to dismiss for lack of both personal jurisdiction and subject matter jurisdiction. *Id*. at ECF No. 23. In connection with the agreement to mediate discussed below and while Plaintiff Feldenheimer's motion to dismiss was pending, Cross Country dismissed its lawsuit against Plaintiff Feldenheimer without prejudice. *Id*. at ECF No. 26.

c. Plaintiffs Summers and Feldenheimer Bring This PAGA Action

On August 16, 2022 and then again on July 27, 2023, Plaintiffs provided Cross Country and the California Labor and Workforce Development Agency ("LWDA") with the required notice of their intent to bring this PAGA action. The requisite 65 days passed, and the LWDA did not notify Plaintiffs that it intended to pursue Cross Country for the violations alleged in Plaintiffs' PAGA letters. FAC at ¶ 4. Plaintiffs filed their initial Complaint on December 13, 2023. The PAGA letters are attached as Exhibits to the original and First Amended Complaint.

d. The Parties Agree to Mediation

Against the backdrop of a pending arbitration addressing the enforceability of Cross Country's arbitration agreement, a stayed federal action, a recently dismissed federal action seeking declaratory relief on the viability of Cross Country's arbitration agreements, and the PAGA matter pending before this Court, the parties elected to mediate with Stephen P. Sonnenberg of JAMS.

As part of the mediation process, the parties exchanged comprehensive wage and hour data for each of the 212 nurses covered by the settlement in this case. The parties also provided Mr. Sonnenberg with extensive briefing (multiple rounds) regarding damages, the merits of both the Labor Code claims at issue here, the likelihood of obtaining class certification, and the possibility that Plaintiffs' claims may remain in arbitration. The parties initially mediated with Mr. Sonnenberg on December 19, 2023. Significant progress was made so the parties reconvened with Mr. Sonnenberg on May 9, 2024. After reaching an impasse, Mr. Sonnenberg made a double-blind mediator's proposal, which both sides accepted. Having reduced the settlement to writing, the Settlement Agreement is now before this Court for preliminary approval. Ricke Decl., ¶15.

IV. SUMMARY OF THE SETTLEMENT

a. The Class of 212 Cross Country Travel Nurses

The Settlement Class constitutes the 212 travel nurses identified by the parties who worked for Travel Staff LLC (an affiliate of Cross County Healthcare, Inc.) in California and who experienced a rate reduction during the term of their temporary working assignment in California between September 13, 2019 and August 12, 2024 (the date the Settlement Agreement was executed). Ex. 1, Settlement Agreement at ¶ II(1)(oo). The PAGA Group Members are coextensive with the Settlement Class. *Id*. at ¶ II(1)(x).

b. The $2,345,000 Settlement Fund

The Settlement Agreement provides that Cross Country will deposit $2,345,000 into a common fund, which will not revert to Cross Country. This amount will fund all settlement payments to eligible Settlement Class Members; the PAGA Payment, including payment to both the LWDA and PAGA Group Members; the Plaintiffs' service awards in the amounts awarded by the Court; Plaintiffs' counsel's attorneys' fees and expenses in the amount awarded by the Court; a $5,000 reserve fund; and the cost of settlement administration. *See id*. at ¶ V(C)(2).

The Net Settlement Fund (less the deductions described above) is allocated 70% to the Labor Code § 510 claims and 30% to the Labor Code § 970 claims and payments within those two allocations will be made principally based on proportional damages while accounting for a modest $100 minimum payment. *Id*. at ¶¶ V(D)(1-4). The payments to class members will be treated as 50% wages reported on a Form W-2 and subject to withholdings and 50% as penalties or interest reported on a Form 1099. *Id*. at ¶¶ V(E)(1-10). If uncashed checks remain after 180 days, then after reminder notices and reissued checks, the balance of the QSF will be distributed to Legal Aid at Work once it falls below $200,000. *Id*. at § V(F).

c. The Scope of the Release

The Settlement Agreement provides for releases narrowly tailored to the facts and theories alleged in the operative Complaint. First, Settlement Class Members who do not opt out will be bound by the following release (*see id*. at ¶ V(A)(1)):

> Upon the Effective Date of the Settlement Agreement, Settlement Class Members shall release, through the date of the written Settlement Agreement, Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action, contingent or accrued, which relate to the

> wage and hour and California Labor Code claims alleged in the operative complaint or relate to other claims that could have been alleged based on the facts asserted in the Operative Complaint, including but not limited to regular and overtime rate calculations, waiting time penalties, minimum wages, timely payment of wages, wage statements, reimbursements, unlawful deductions from wages, and derivative or related claims, including but not limited to claims for restitution and other equitable relief, liquidated damages, punitive damages, or penalties of any nature whatsoever.

Second, PAGA Group Members will be bound by the following release (*id*. at ¶ V(A)(2)):

> Upon the Effective Date of the Settlement Agreement, Class Members who are also PAGA Group Members shall additionally release, through the date of the written Settlement Agreement, Released Parties for all claims for civil penalties under the California Private Attorney General Act (Cal. Labor Code § 2698 et seq.) which relate to the wage and hour and California Labor Code claims alleged in the operative complaint and Plaintiffs' PAGA Notice or relate to other claims that could have been alleged based on the facts asserted in the operative complaint and Plaintiffs' PAGA Notice.

d. The Notice Process

Within 14 days of the Court's Order granting preliminary approval, Cross Country will provide the Settlement Administrator with the Class List. *Id*. at § IV(C). Within another 21 days, the Settlement Administrator will then issue Notice (Exhibit A to the Settlement Agreement) by U.S. mail and email (where possible) to each class member. *Id*. The Notice explains in clear language what the case is about, what class members will receive (*i.e.*, individualized settlement payment estimate), and what they are giving up (*i.e.*, the release). The deadline for class members to request exclusion or object is 45 days from the initial mailing of the Notice. *Id*. at § IV(D); *see id*. at § II(1)(kk).

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

a. The Standard of Review for Preliminary Approval of Class Action Settlements.

The California Rules of Court ("Rules") set forth two steps for evaluating a class action settlement. First, "the court preliminarily approves the settlement and the class members are notified as directed by the court." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) (citing Rule 3.769(c)-(f)). Second, "the court conducts a final approval hearing to inquire into the fairness of the proposed settlement." *Id*. (citing Rule 3.769(g)).

At the first, preliminary approval step, courts must determine whether "there is, in effect, 'probable cause' to submit the proposal to members of the class and to hold a full-scale hearing on its fairness." *California v. Levi Strauss & Co*., 41 Cal. 3d 460, 485 (1986) (quoting Manual for

Complex Litigation § 1.46). At this stage, "the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis original). This preliminary inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996) (quoting *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). "Public policy generally favors the compromise of complex class action litigation." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (quoting *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006)).

Courts have broad powers to determine whether a proposed class action settlement is fair, reasonable, and adequate. *Mallick v. Superior Ct*., 89 Cal. App. 3d 434, 438 (1979). The decision to approve or reject a proposed settlement is committed to the trial court's sound discretion. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 234-35 (2001), *disapproved of on other grounds* by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018).

On the other hand, Plaintiffs' PAGA claim is not a class claim, and the procedural rules for approving class settlements thus do not apply. *See generally Estrada v. Royalty Carpet Mills, Inc*., 15 Cal. 5th 582, 607 (2024); *Arias v. Superior Court*, 46 Cal. 4th 969, 982-83, 986 (2009). However, PAGA provides that the LWDA must be notified of a PAGA settlement (which Plaintiffs have done) and that the court "shall review and approve" any PAGA settlement. Labor Code § 2699(l)(s)(2). The court reviews a PAGA settlement to "determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc*., 72 Cal. App. 5th 56, 77 (2021).

b. The Settlement Is Non-Collusive and Within the Range of Reasonableness.

Courts consider several factors in making the fairness determination, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk*, 48 Cal. App. 4th at 1801. Generally, settlement agreements are presumed fair when: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id*. at 1802. This list "is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal. App. 4th at 245**.**

i. The settlement is the product of arm's-length negotiations.

This settlement is the result of extensive arm's-length negotiations between experienced Plaintiffs' counsel, who are deeply familiar with the facts and legal issues of this case, and counsel for Cross Country, who vigorously defended the case. The negotiations took place under the guidance of Stephen P. Sonnenberg, a highly regarded mediator for complex, high-stakes employment litigation such as this one. Ricke Decl., ¶ 15. Mediator Sonnenberg's active role in the mediation substantiates the non-collusive nature of the Settlement. *See, e.g., In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 948 (9th Cir. 2011) (noting that the "presence of a neutral mediator . . . weigh[s] in favor of a finding of non-collusiveness").

It was only through a double-blind mediator's proposal at the end of the second full day of mediation that a settlement was reached. Ricke Decl., ¶ 15. The months-long negotiation, including exchanging, analyzing, and discussion around multiple batches of wage and hour data for each class member, all under the supervision of mediator Sonnenberg, gave the parties "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation," which further supports the non-collusive nature of the settlement. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 801 (2009).

ii. The extent of information exchanged supports preliminary approval.

The status of discovery and exchange of information at the time of settlement also weighs in favor of preliminary approval. This requirement exists so that parties can provide the court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 116, 132-33 (2008).

Here, Plaintiffs obtained comprehensive wage and hour data for each of the 212 class members showing the number of overtime hours worked each workweek, the hourly rates paid, the stipends paid, the period of the contract, when the mid-contract rate reductions occurred, and the number of guaranteed hours each week. This data allowed Plaintiffs' Counsel to calculate each class member's overtime damages under Labor Code § 510 as well as each class member's bait-and-switch damages under Labor Code § 970. As explained below, Plaintiffs' Counsel have litigated these same claims under both federal and state law in forums around the country, which informs how the parties value the risk associated with each claim. Ricke Decl., ¶¶ 6, 15-16, 21.

iii. Weighing the strength of Plaintiffs' case and the risk of further litigation favors settlement.

In evaluating the strength of a plaintiffs' case, a court should not reach any conclusions on contested issues of law or fact, because it is the uncertainty of such issues that leads parties to resolve their disputes short of a final, litigated resolution. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1145 (2000). Here, although Plaintiff's Counsel believes the evidence supports Plaintiffs' Labor Code claims, continued litigation poses several uncertainties. Ricke Decl., ¶ 21.

As a threshold matter, class members faced the prospect of individual arbitration. See *Summers* Federal Arbitration, ECF No. 32, at 7-8. Although Plaintiffs Summers was actively challenging the arbitrability of her claims before an arbitrator prior to reaching this settlement, victory was not guaranteed. To proceed in Court, each class member would need to hire a lawyer and win that fight on their own, which would almost assuredly preclude the vast majority of class members from pursuing these claims. Procedurally, if Plaintiffs were able to defeat arbitration, they still faced risks at class certification. If either claim was not certified as a class, then, as with arbitration, each class member would have to press their claims on his or her own behalf. This likewise weighs in favor of settlement. Ricke Decl., ¶ 21.

Substantively, Plaintiffs' claims also faced risk. For example, Cross Country would likely advance arguments that its payment of stipends was dissimilar to those at issue in the Ninth Circuit's seminal decision on the issue in *Clarke, supra*. Although Cross Country did tie the payment of stipends to the quantity of work performed, there were factual disputes between the parties about other factors relevant in *Clarke*, like the banking of hours system, whether the stipends reasonably approximated expenses, and how Cross Country treated stipends for non-traveling nurses. *See Clarke*, 987 F.3d 848, 858. Although, in Plaintiffs' view, the most important factor is the tying of stipends to the quantity of work, factual and legal uncertainty remained on the other factors. Ricke Decl., ¶¶ 21.

Similarly, as far as Plaintiffs' Counsel are aware, Plaintiffs' claims under Labor Code § 970—that engaging in and failing to disclose an alleged pattern and practice of reducing travel nurses' wages mid-contract violates the statute—have never been resolved by a Court or jury on the merits. That said, orders in other similar cases show that uncertainty remains and weigh in favor of settlement. *See generally Egan v. Fastaff, LLC*, 2024 WL 719006 (D. Colo. Jan. 31, 2024) (denying motion to dismiss as to the portion of the travel nurses' complaint alleging tort-based bait-and switch claims but granting it as to the contract-based claims).

Finally, there is a risk that if the case proceeded to trial, the factfinder would adopt some or all of Cross Country's positions, which would either limit or potentially eliminate Plaintiffs' claims. Courts routinely hold that "tangible, immediate benefits" of settlement outweigh such risks. *Ebarle v. Lifelock, Inc.*, 2016 WL 234364, at *8 (N.D. Cal. Jan. 20, 2016). Further, even if the factfinder found for Plaintiffs at trial, class members may not receive any recovery until after years of costly appeals. *See, e.g., Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results"); *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015) ("Immediate receipt of money through settlement, even if lower than what could potentially be achieved through ultimate success on the merits, has value to a class, especially when compared to risky and costly continued litigation.").

Plaintiffs' PAGA Claims are derivative of their Labor Code §§ 510 and 970 claims and thus subject to the same risks. Adding to the risk, PAGA penalties may be reduced by the court based on a variety of factors, making them even less certain. Labor Code § 2699(e)(2).

iv. The settlement provides significant monetary relief to class members.

The $2,345,000 value of the settlement weighs heavily in favor of finding that the settlement falls within the range of possible final approval. *Wershba*, 91 Cal. App. 4th at 244-45. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Id*. at 250. Settlements providing for narrower relief than could be obtained with complete victory at trial can be fair and reasonable because "'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" *Id*. (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc*., 455 F.2d 101, 109 (7th Cir. 1972)). *See also Officers for Just*., 688 F.2d 615, 628 (9th Cir. 1982) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.").

Given the uncertainties and risks of trial detailed above, and the significant time and risk involved in an appeal of any verdict in favor of Plaintiffs, the settlement is an excellent result for the class. The $2,345,000 settlement represents outstanding value given the current procedural posture and the vastly competing views of the parties as to the merits and what would be likely at trial (or in arbitration, as discussed above). Plaintiffs' counsel calculated total unpaid wages as $6,263,902.18 ($5,132,381.01 in overtime damages and $1,131,521.17 in bait-and-switch damages). The total fund amount thus represents approximately 37% of best-day actual unpaid wages under Plaintiffs' theory of liability. On an individual basis, under the most conservative calculation, the estimated per capita recovery for each class member will be more than $6,800. This is a meaningful payment for working nurses. The value of the settlement is underscored by the fact that there is no claims process and payments will be made automatically upon final approval.

v. The experience and views of Plaintiffs' Counsel support approval.

Plaintiffs are represented by respected lawyers with decades of class action experience and a long and successful record of prosecuting employment matters to favorable resolutions. Ricke Decl., ¶¶ 4-13; Cervantez Decl., ¶¶ 3-10. Their view that this settlement is fair weighs in favor of preliminary approval. *7-Eleven*, 85 Cal. App. 4th at 1146

vi. The allocation of the settlement fund is equitable.

The amount attributed to each element of the Gross Settlement Amount—*i.e.*, the Net Settlement Fund, PAGA Payment, Class Representative Service Award Payments, and Class Counsel Fees and Expenses Payment—is fair, reasonable, and adequate. Most importantly, the allocation among class members is equitable and based on the individual class member's proportional recoverable damages relative to one another. For example, the Net Settlement Fund is allocated 70% to the Labor Code § 510 overtime claims and 30% to the Labor Code § 970 claims, which tracks the approximate distribution of unpaid wages attributable to the claims. Then, after a $100 minimum payment to each class member, settlement payments are allocated to class members in proportion to their actual damages under each section of the Labor Code. This ensures that each class member is compensated equitably relative to his or her potential damages while ensuring all class members are paid for the release of claims. *See* Settlement Agreement at § V(D)(1)-(3).

vii. The portion of the Net Settlement Fund allocated to the PAGA Payment is fair, reasonable, and adequate.

The $5,000 PAGA Payment is reasonable under the circumstances, particularly considering that it is in conjunction with a larger class action settlement resolving the underlying claims on behalf of the workers. The ratio of the PAGA Payment to the Gross Settlement Fund is comparable to others approved in hybrid class action and PAGA settlements. *See, e.g., Garcia v. Gordon Trucking, Inc.,* 2012 WL 5364575, at *7, *11 (E.D. Cal. Oct. 31, 2012) (approving a $10,000 PAGA award out of a $3.7 million settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. Feb. 16, 2011) (approving a $10,000 PAGA award out of a $6.9 million settlement).

viii. The proposed Service Awards are fair, reasonable, and adequate.

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins.*

Exchange, 115 Cal. App. 4th 715, 725-26 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case). The proposed $10,000 service awards here are warranted. In addition to providing a general release, the Named Plaintiffs have provided significant value to their fellow class members that should be compensated. Plaintiff Summers originally pressed these same claims two years ago in federal court and then fought the enforcement of Cross Country's arbitration provision before the AAA in an individual arbitration. Likewise, Cross Country sued Plaintiff Feldenheimer in federal court when her counsel asked whether she had signed an arbitration agreement with the company. After that, both Named Plaintiffs asserted these PAGA claims on behalf of 210 other nurses and their efforts ultimately resulted in a class and PAGA settlement that will result in average estimated settlement payments exceeding $6,800. Plaintiffs will fully brief the reasonableness of the service awards in connection with final approval.

ix. The proposed award of Attorneys' Fees and Costs is fair, reasonable, and adequate.

Class Counsel will separately move the Court for an award of attorneys' fees and expenses, supported with declarations and documentation. California courts routinely conclude that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *City & County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110-11 (1995). *See also, e.g., Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 503 (2016) (recognizing the following advantages to using the percentage method: "relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.").

The fees requested in this Settlement constitute one third of the Gross Settlement Fund and match the standard one-third fee awards that are commonly approved by California courts. *See, e.g., Laffitte*, 1 Cal. 5th at 485, 503 (affirming fee award of one-third of the common fund in a wage and hour class action); *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557 n.13 (2009) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). For purposes of preliminary approval, the requested fee and expense award is fair, reasonable and adequate.

VI. CLASS CERTIFICATION IS APPROPRIATE FOR SETTLEMENT

a. The Class of 212 Travel Nurses is Sufficiently Numerous.

"There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous *that* "'it is impracticable to bring them all before the court...'" *Hendershot v. Ready to Roll Transp., Inc*., 228 Cal. App. 4th 1213, 1223 (2014) (quoting Code of Civ. Proc., § 382) (emphasis in original). Here, there are 212 class members who, by definition, travel for a living and many of whom do not live in and no longer work in California. It would not be practicable to join this many individuals before the Court.

b. The 212 Class Members Are Known and Identifiable.

"The party advocating class treatment must demonstrate the existence of an ascertainable [] class." *Brinker Rest. Corp. v. Superior Ct*., 53 Cal. 4th 1004, 1021 (2012). Here, the parties have identified the putative class of 212 travel nurses from Cross Country's wage and employment records, which include names, addresses, and Social Security Numbers.

c. There is Significant Community of Interest Among the Settlement Class.

The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Noel v. Thrifty Payless, Inc.,* 7 Cal. 5th 955, 968 (2019) (cleaned up). Here, each factor is met for this limited group of 212 nurses asserting common wage and hour claims.

i. Common questions of law and fact predominate.

"As a general rule … if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Noel*, 7 Cal. 5th at 968 (cleaned up).

As to the Labor Code § 510 claims, federal courts have routinely found predominance satisfied in cases, like here, where travel nurses challenge the failure to include stipends alleged to be disguised wages in their regular rate of pay for overtime purposes. The predominant, class-wide issue is whether the stipends should be treated as wages or expense reimbursement, which is capable of class-wide resolution. *See, e.g.*, *Clarke v. AMN Servs., LLC*, 2017 WL 6942755, at *4 (C.D. Cal. Oct. 12, 2017) (certifying class under FRCP 23 and finding predominance satisfied because "Plaintiffs do not question whether the per diems are reasonable estimates of appropriate expenses incurred while traveling; they contend the per diems should be considered compensation for work because they are tied to hours worked.").[3]

As to the Labor Code § 970 claims, the class is defined such that each class member experienced a bait-and-switch or mid-contract rate reduction while working for Cross Country in California. Whether Cross Country maintained a pattern and practice of reducing its travel nurses' compensation midstream and failed to disclose this to its workers is a class-wide question that predominates over others. In other words, Cross Country's "liability can be determined by facts common to all members of the class." *Noel*, 7 Cal. 5th at 968 (cleaned up).

ii. Plaintiffs' claims are typical of the class they seek to represent.

"The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App. 5th 1131, 1162 (2019) (cleaned up). Here, Plaintiffs Summers and Feldenheimer both worked as travel nurses in California for Cross Country, both worked overtime at a regular rate that did not account for stipend payments, and both experienced a mid-contract rate reduction. Their claims are typical of the class they seek to represent. FAC at ¶¶ 25-33, 43, 69(b).

iii. Plaintiffs will adequately represent the class.

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of

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[3] *Carlino v. CHG Med. Staffing, Inc.*, 2019 WL 1005070, at *1 (E.D. Cal. Feb. 28, 2019) (granting class and collective certification of travel nurse stipend "regular rate" claims in part because "[i]f a traveler fails to satisfy her weekly hours requirement, the per diem is reduced in proportion to the shortfall."); *Howell v. Advantage RN, LLC*, 2018 WL 3437123, at *10 (S.D. Cal. July 17, 2018) (granting class and conditional collective certification of nationwide travel nurse stipend "regular rate" claims where the travel nurses alleged the staffing company subjected them to "common unlawful policies excluding the value of the per diem stipend and bonuses.").

the class." *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). In this case, Class Counsel is well qualified. *See* Ricke Decl., ¶¶ 4-13; Cervantez Decl., ¶¶ 3-10; *see also Garcia v. Tyson Foods, Inc.*, 2012 WL 5985561, at *4 (D. Kan. Nov. 29, 2012), *aff'd*, 770 F.3d 1300 (10th Cir. 2014) (after winning a jury verdict in a wage and hour class action, Judge Marten of the District of Kansas noted that "it appears that plaintiffs' counsel's experience in wage-hour class actions has unmatched depth."). Moreover, both named Plaintiffs understand their role as class representatives, their fiduciary obligations to the putative class members, and have diligently prosecuted this action to a successful outcome. Furthermore, for the same reasons that their claims are typical of the class, Plaintiffs likewise have no interests that are antagonistic to the class they seek to represent.

Class certification for settlement purposes is appropriate here.

VII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The final step in the settlement approval process is a final fairness hearing at which the Court may hear additional evidence and argument necessary to make its ultimate settlement evaluation. At that hearing, the parties and the Court will further address the fairness, adequacy, and reasonableness of the Settlement Agreement, the amount of service awards to be awarded to the Named Plaintiffs, the amount of attorneys' fees and expenses to be awarded to Plaintiffs' Counsel, and whether final judgment resolving the case should be entered. Plaintiffs request that, should the Court grant the instant motion for preliminary approval, a date for a final approval hearing should also be set approximately 120 days after preliminary approval, along with a schedule of events leading up to the hearing, as set forth in the [Proposed] Order submitted herewith.

Dated: August 13, 2024

Respectfully submitted,

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